IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

..

:: ORDER ::

(1) M/s Priya Plastics Vs. Rajasthan Financial Corporation &Ors.

S.B. CIVIL WRIT PETITION NO.2359/1989.

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(2) Govind Puri Vs. Rajasthan Financial Corporation & Ors.

S.B. CIVIL WRIT PETITION NO.1841/1989.

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Date of Order :: 5th July 2006.

PRESENT

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Reportable

Mr. M.S. Singhvi, for the petitioner in CWP No.2359/1989 (the respondent No. 5 in CWP No.1841/1989).
Mr. J.P. Joshi, for the petitioner in CWP No.1841/1989 (the respondent No.5 in CWP No.2359/1989).
Mr. B.D. Sharma, for the respondent No.4
Mr. S.G. Ojha, for the respondent- R.F.C.

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BY THE COURT:

These two writ petitions being related to the same matter of sale of assets of M/s Priya Plastics (the petitioner of Writ Petition No.2359/1989) by the Rajasthan Financial Corporation (RFC), and having interconnected facts, have been heard together and are taken up for disposal by this

common order. The matter encompasses background facts and so also subsequent developments and could be taken into comprehension as follows:

Facts as stated in Writ Petition No.2359/1989.

The petitioner of the writ petition No.2359/1989 is the borrower of loan from RFC and defaulter in repayment. The respondent Nos.1 and 2 in the writ petition are the RFC and its Deputy General Manager respectively; the respondent No.3, Shri Rani Dan Soni has been one of the bidders for purchase of the assets of the petitioner M/s. Priya Plastics, and his bid of Rs. 1,76,000/- forms one limb of contentions in these cases; the respondent No.4, Shri R.D. Sharma is the subsequent bidder whose negotiated bid of Rs.1,66,000/- for purchase of the assets in question has admittedly been approved by the RFC; and the respondent No.5 Shri Govind Puri has made a subsequent offer of Rs.2,01,000/- for purchase of the same assets. The said respondent No.5 Shri Govind Puri is the petitioner of the connected Writ Petition No.1841/1989.

According to the petitioner M/s. Priya Plastics, it had availed of a loan of Rs.1,27,000/- for the purpose of its small scale industrial undertaking from the respondent RFC in the month of March, 1981 and an agreement was executed on 19.03.1981 (Annex.1). According to the petitioner, the industrial unit was ready for production in the month of

September, 1981 but on account of the factors like power-cut and rise in taxes, the factory established by the petitioner ran in losses and had to stop production after six months; the petitioner sought additional loan and availed the same to the tune of Rs.31,000/- in the month of October, 1981 and the unit re-started production but again on account of the same factors, closed down after a period of about 6-9 months. The petitioner has averred that it could not repay the loan installments and the respondent RFC pressed hard for repayment and refused any relief and after serving of notice, put their lock on the petitioners' factory on 30.10.1985. A notice for auction was published in the newspaper dated 30.01.1986. The petitioner filed writ petition No.326/1986 before this Court challenging taking over of possession and for other reliefs regarding grant of concessional treatments and waver of penalty and for re-schedulement of payment etc. The said writ petition was dismissed on 27.02.1987. The petitioner has averred that its factory is in possession of the respondent RFC since 30.10.1985 and the petitioner was not aware about the proceedings taken by them after 27.01.1987.

According to the petitioner, in the middle of the month of June, 1989 it was served with a copy of the writ petition filed by Shri Govind Puri (i.e. Writ Petition No.1841/1989); and from the said writ petition and the reply filed therein by the

respondent No.4, Shri R.D. Sharma, the petitioner came to know about the facts that the factory was put to auction for the first time on 13.07.1987 on standard terms and conditions (Annex.2); that at the said auction, respondent No.3 made the highest bid of Rs.1,08,000/- which he increased to Rs.1,15,000/- in negotiation on 18.07.1988(Annex.3); that after getting the firm offer of Rs.1,15,000/-, advertisement was published in the newspaper of 31.08.1988 (Annex.4) inviting fresh offers over and above the offer already received; that in response to the aforesaid notice negotiation took place and the respondent No.3 increased his bid to Rs.1,76,000/- and the respondent RFC informed him of approval of such bid on the terms and conditions as stated in the letter dated 27/28.9.1988(Annex.5).

The petitioner has contended that the conditions that were put to the respondent No.3 who had increased the bid to Rs.1,76,000/- were substantially different from the one disclosed in the auction notice and that was a device to dissuade the intending purchaser from accepting the terms and conditions for favouring somebody else. The said bidder respondent No.3 by his letter dated 13.10.1988 objected to the change in terms and conditions and the RFC by its letter dated 02.11.1988 (Annex. 6) stated that RIICO dues would be paid by the purchaser and not by the RFC and the interest on

balance amount would be charged @ 12.5% per annum and not @ 13.5% per annum. The petitioner has further averred that some disputes regarding the terms and conditions persisted and the respondent No.3 was called for further negotiations on 19.04.1989 by the letter dated 06.04.1989 (Annex.7). It has been alleged that before the respondent No.3 was called for further negotiations, the RFC published another advertisement (Annex. 8) inviting tenders in respect of the petitioner's assets, last date for submission of tender being 23.03.1989 and even in the face of an offer of Rs.1,76,000/-, the maximum proposal at hands was shown in this tender notice only at Rs.1,00,000/-. The petitioner has further averred that it appeared that the respondent No.4 submitted a tender for an amount of Rs.1,10,000/- and deposited Rs.11,000/- being 10% amount of his offer on 23.03.1989 and a copy of receipt produced by the respondent No.4 in writ petition No.1841/1989 has been submitted with this writ petition as Annexure 8/A. According to the petitioner, the respondent No.5 Shri Govind Puri also made an application to the RFC on 03.05.1989 (Annex.9) pointing out the market price of assets at Rs.2,80,000/- and offered Rs.2,01,000/- for the same; and the Deputy General Manager of RFC informed him by the letter dated 15.05.1989 (Annex.10) that he should contact the head office at Jaipur with 10% security amount.

The petitioner has submitted that from the pleadings made in Writ Petition No.1841/1989 it appeared that before the respondent No.5 could act in pursuance of the letter dated 15.05.1989, the RFC had decided to accept the negotiated offer of respondent No.4 for Rs.1,65,000/-, though acceptance letter had not been communicated to the respondent No.4, and before it was so communicated, the respondent No.5 filed the said writ petition and obtain the interim order.

The petitioner has contended that the market value of the assets is estimated by the prospective buyer to be over Rs.4 lacs and only 50% of the estimated value has been offered for the same and the RFC, notwithstanding having received the offers of Rs.1.76 lacs and above Rs.2 lacs, had decided to pass on the property to the respondent No.4 at a throw away price of Rs.1.65 lacs only without making efforts to realize full market value of the assets, and such action is detrimental to the petitioner's interest. It has also been alleged that the respondents have acted in arbitrary manner in not accepting the highest bid even after negotiating with the highest bidder. The petitioner has further contended that even after modifying the terms of sale of passing on the liability of RIICO to the prospective purchaser, the RFC had not disclosed the liability of RIICO in response to the query made by the respondent No.5 and, to the petitioner's knowledge

such outstanding of RIICO may not be more than Rs.5000/-. The cause to maintain this writ petition has been stated in paragraph 23 of the writ petition thus:

> ‘’23. Be that as it may, from the aforesaid facts, it is apparent that in the face of the higher offer for Rs.1,76,000/-, which apparently was pending consideration until April, 89, the tenders were invited by giving out that only the offer of Rs.one lac is in hand and thereafter even after receiving the offer for Rs.2 lacs, with the information that the estimated value of the property is over Rs.4 lacs, the respondents have in hot haste in contrast with the consideration of offers made by the respondent No.3, have decided to confer the larjess *(largess*) on respondent No.4, who out of the three respondents, had offered the least price for the assets of the petitioner which are being disposed of by the respondent Corporation to realize its dues outstanding against the petitioner.’’

While questioning the acceptance of the offer of respondent No.4 being arbitrary, illegal and unjust and while asserting that the corporation was in a position of a trustee and was under obligation to act in the best interest of the beneficiary i.e. the petitioner and to secure maximum price for the property, the petitioner has alleged that the corporation had received an offer of over Rs.2 lacs on 03.05.1989 much before issuance of the letter of acceptance to the respondent No.4; and in the circumstances, the respondent No.5 ought to have been given a chance to make deposit of 10% of his offer to show his bonafide and the RFC was also required to call

upon all the offerers for negotiation so as to extract best price or to hold a public auction with a minimum price of Rs.2,01,000/-. The action of RFC in allegedly discarding the offer of the respondent No.5 outright and dilly-dallying on the offer made by the respondent No.3 has been assailed as unjust, arbitrary and unreasonable to favour respondent No.4 at the cost of the petitioner. It has further been contended that the respondent ought to have given the opportunity to the petitioner to secure a buyer through private negotiations to realize maximum amount. It has also been contended that as per the standing terms and conditions, even the prospective buyer is not required to pay full price and with down payment of about 25%, remaining 75% consideration is converted into long term loan; and such amount of down payment even the petitioner was prepared to pay forthwith if the balance amount was converted into long term loan with relaxation of penal interest.

The petitioner has prayed for the reliefs of issuance of writ, order or direction restraining the respondent Nos.1 and 2 from transferring the property in question to the respondent No.4 for Rs.1,65,000/- and to permit the respondent No.5 to deposit 10% of his offer and then for negotiating the price higher than that offered by respondent No.5; and in the alternative to consider the petitioner's offer for immediate

payment of 25% of the highest bid received and to covert the balance amount due against it in long term loan.

This writ petition was filed on 17.07.1989 whereas the other writ petition No.1841/1989 by the subsequent offerer Shri Govind Puri had already been filed on 29.05.1989. Before coming to the averments in writ petition No.1841/1989, the reply averments in this writ petition No.2359/1989 may be noticed.

Reply averments in writ petition No.2359/1989 by the Respondent No.4.

The respondent No.4 Shri R.D. Sharma, whose negotiated bid of Rs.1,66,000/- has been accepted by the RFC, submitted in his reply that the factory was rightly taken over by the RFC and the earlier writ petition filed by the petitioner failed. It has been maintained that the averments that the petitioner was not knowing about the proceedings taken after 27.01.1987 were not correct and filing of the present writ petition shows that the petitioner had every knowledge about the facts. It has been asserted that the other petitioner Shri Govind Puri and the present petitioner M/s. Priya Plastics were in collusion and the other writ petition was filed only at the instance of present petitioner.

Regarding the change of terms and conditions about the offer of respondent No.3, it has been maintained that there

was no change in the terms and conditions and the auction notice published on 31.08.1988(Annex.4) clearly carried the terms and conditions that RIICO dues would be paid by the purchaser and the petitioner has failed to show as to in what manner the RFC has dissuaded the intending purchaser, respondent No.3? It has been pointed out that up to that point of time, the answering respondent was not in picture at all and the imputations made upon RFC were not correct. The answering respondent has pointed out that the respondent No.3 did not deposit 25% of the bid amount and ultimately his security was forfeited on 31.01.1989 and “that is how he went out of the scene”. The answering respondent has questioned the procedure adopted by RFC in inviting the respondent No.3 for negotiations and it has been averred that calling respondent No.3 for negotiations in relation to the auction proceedings held on 23.03.1989 was “uncalled for and against rules” because his matter had already been decided on 31.01.1989 and it was against the rules to have called a person for negotiation on 19.04.1989 who had not participated in the auction held on 23.03.1989. It has been contended that the respondent No.3 having already resiled, his offer of Rs.1,76,000/- could not be treated to be in existence. So far the respondent No.5 is concerned, it has been maintained that he was not a participant in the auction held on 23.03.1989 and

his offer could not have been considered on a simple letter. It has further been submitted that the valuation of property to the tune of Rs.4 lacs after the completion of auction proceedings was a hoax and an offer given after the answering respondent's negotiated bid of Rs.1,66,000/- was recommended for sanction cannot affect his case. The answering respondent has submitted that the proceedings have to be terminated somewhere and has raised the anxiety that even after Shri Govind Puri a new offerer may come up and then how would it be possible to "end such endless offers"? According to answering respondent such practice would fail the system of auctions. The answering respondent has maintained that no provision or law requires that after asserting the highest price in open auction the preference over the highest bidder should be given to the person whose property is being sold on the same terms and conditions and, the proposition as put forward by the petitioner would simply be putting the bidders to be used as instruments to arrive at higher price and that would be a gross misuse of the process. The proposition of the petitioner being handing over the assets on payment of 25% of the amount with grant of fresh loan has been refuted being not bonafide and the petitioner having already defaulted and failed in his earlier writ petition being not entitled to agitate the matter over again.

Reply averments in Writ Petition No.2359/1989 by the respondent RFC.

The respondent Nos.1 and 2 in their reply to the writ petition have asserted that it was incorrect to say that the petitioner was not aware of the proceedings after 27.01.1987. It has been maintained that the petitioner was always keeping a watch over the happenings with regard to the auction of his factory, and all the auctions were made after public advertisements and it cannot be said that the petitioner was not aware of the facts. It has been pointed out that the terms and conditions put to the respondent No.3 for his offer of Rs.1,76,000/- were not to dissuade him but were for the benefit of the petitioner himself. Regarding the offer of respondent No.5, it has been asserted that the same was not a valid offer and he came only after finalization of the deal by the respondent and even after the letter addressed to him, he did not contact the Head Office with 10% security amount and merely continued with letters and the RFC was not required to take any action on the offer of respondent No.5. The offer of respondent No.4 was considered to be a genuine offer and the same was accepted. In response to Para 23 of the writ petition as quoted hereinabove, the respondent RFC has stated in its reply thus:

> ‘’23. That contents of para 23 are again misleading. Before the last advertisement for auction was issued, respondent No.3 was communicated about that, but he was not serious about his offer and the security is liable to be forfeited. Therefore, when last auction notice was given, at that time respondent No.3 had already been communicated about the fate of his offer. Further after the offer of respondent No.4 was considered proper, the respondent No.3 was again intimated and at that stage he made an application to the Answering Respondents that he is not interested in the auction and he wants it only on the terms last stated by them and he wants to withdraw his money. Therefore, there is no substance in the grounds raised by the petitioner in this regard.’’

Pleadings in Writ Petition No.1841/1989 and the course of proceedings therein:

As already noticed above, Writ Petition No.1841/1989 by Shri Govind Puri was filed on 29.05.1989, prior to the filing of the writ petition by the borrower M/s. Priya Plastics. The said petitioner Shri Govind Puri has averred in the writ petition about the assets of M/s. Priya Plastics and has alleged that when he came to know that the aforesaid factory of M/s. Priya Plastics was being offered for sale by RFC, he made an application to the RFC on 03.05.1989 giving out the estimated costs of the land, factory building, plant and machinery and raw material and looking to the condition of RFC that the purchaser has to bear the outstanding dues of various Departments, he made an offer of Rs.2,01,000/- of his own for

the purchase of the said industrial concern; and he was informed by the Dy. Manager of RFC by his letter dated 15.05.1989 for contacting Head Office at Jaipur with 10% security. According to this petitioner he received the letter on 20.05.1989 and he sent two separate registered letters to the General Manager and the Managing Director of RFC requesting them to inform the date on which he should present himself with 10% of the security and also requested to disclose as to which other liabilities he shall have to bear and requested for approval of his offer. Grievance has been raised in this writ petition that though the petitioner did not receive any response to his letters, he was informed by the Jodhpur Office of RFC that they had received letter dated 19.05.1989 that the assets of M/s. Priya Plastics have been approved to be transferred in favour of Shri R.D.Sharma for a sum of Rs.1.66 lacs only. The petitioner has submitted that he was surprised to learn about the proposal of transfer to the said Shri R.D.Sharma at much lower price and in the face of his own offer of Rs.2.01 lacs. The said petitioner has thereafter narrated about his having learnt the facts of previous auctions, negotiations and the bids of Shri Rani Dan Soni, as already noticed hereinabove.

It has been maintained in the writ petition that the action of the RFC having public element in it has to conform to

the requirements of reasonableness and the RFC cannot act in the manner that would benefit a private party at the costs of public funds. In substance, it has been asserted that the RFC had with it two offers for the property in question of Rs.1.76 lacs (from Shri Rani Dan Soni) and of Rs.2.01 lacs (from the petitioner Shri Govind Puri) and the RFC was not reasonable in taking the decision in the benefit of respondent no.4 for transferring the assets at much lower price.

It has been prayed in the writ petition that the transfer of assets of M/s. Priya Plastics in favour of Shri R.D.Sharma as disclosed in the letter dated 19.05.1989 be quashed and the respondents be directed to consider his proposal for purchase of the assets on its own merits and in the alternative for directions to the respondents to hold a public auction for disposal of the assets of M/s. Priya Plastics with a minimum offer of Rs.2.01 lacs as made by the petitioner.

In this writ petition No.1841/1989 on 01.06.1989 while show cause notices were issued, by way of interim order, the RFC was restrained from transferring and delivering possession of the assets of M/s. Priya Plastics to Shri R.D.Sharma or to any other person. It may also be pointed out that before filing of the aforesaid writ petition No.2359/1989 the borrower M/s. Priya Plastics, in its capacity as respondent No.5 in writ petition No.1841/1989, had moved

an application with the submissions that the RFC was not entitled to dispose of the Unit at a price of Rs.1.66 lacs and in case the Unit is permitted to be disposed of, it should not be sold to respondent no.4 but be sold to the petitioner on the amount offered by him; or the RFC be directed to restore the possession to the borrower who was prepared to repay the loan if penal interest be waived and it was submitted that the answering respondent reserves his right to file fresh writ petition in case this Court was not inclined to accept his prayer.

The aforesaid Shri R.D. Sharma, whose negotiated bid of Rs.1.66 lacs had been considered and approved by the RFC by the letter dated 19.05.1989 has refuted the submissions made in this Writ Petition No.1841/1989 and has submitted that the said petitioner had no right to maintain the writ petition and the same had been filed with concealment of material facts. It has been pointed out that the unit in question was put to auction thrice and the first and third auction notices were not filed with the writ petition but the second auction notice and conditions of the first auction notice were filed. The answering respondent has submitted a copy of the third auction notice and has pointed out that the petitioner was not a party to the auction proceedings and there could arise no question of consideration of his case and the private offer

made by him having no connection with auction proceedings, ought to have been rejected and the office of the RFC at Jodhpur had no jurisdiction to suggest that the petitioner may deposit 10% amount and that the Jodhpur office of RFC was acting in collusion with the petitioner and others. It has been submitted that the petitioner has no legal right to be considered and there being no infringement of any of his legal rights, the writ petition was liable to be rejected. Giving out the details of three auction proceedings, the answering respondent has submitted that in negotiations he had increased the offer to Rs.1.66 lacs and his bid had already been finalized and that he was an unemployed Post-Graduate and the stay order was causing irreparable loss to him.

The respondent RFC in its reply has asserted that the petitioner has no locus standi to maintain the petition, and giving out the details of auction notices, it has been submitted that at the time when the petitioner submitted his so-called offer, the matter had already been finalized at the office of the respondent No.2 and the higher offer of Shri R.D. Sharma was accepted who raised his bid to Rs.1.66 lacs on 19.04.1989. The bid-sheets prepared for the bids on 23.03.1989 and 19.04.1989 have been produced with the reply. Regarding the case of the petitioner, it has been pointed out that the letter sent by him did promise a higher amount but was not

accompanied by the requisite 10% of the amount as security and, therefore, he was advised that he should deposit 10% security and approach the Head Office and this advise was given in view of the fact that the office of respondent No.2 had already finalized the bid on 19.04.1989. However, according to the respondents, the petitioner felt contended only by writing letters to the Head Office and since there was no valid offer, there was no question of any consideration being given to the claim of the petitioner. It has been pointed out by the respondent RFC that it might be very convenient for anybody to come out after conclusion of the bids with higher offer which is not valid and disturbs the functioning of the respondent RFC and so also public interest; and if at all the petitioner had any interest, he should have responded to the public notified tender notices, issued three times. Regarding the offer of Shri Rani Dan Soni (respondent No.3), it has been pointed that he had chosen to keep silence despite notice for forfeiture of his security and when asked to contact, he stuck to his old proposition of being offered the disputed factory on his terms or else the amount be returned to him, therefore, he has chosen to withdraw himself totally from the auction of the disputed factory; and the letter of the said respondent No.3 Rani Dan Soni has been placed on record as Annexure-R/4.

The claim of the petitioner Shri Govind Puri has been refuted being hollow and baseless.

The said petitioner has submitted a rejoinder to the reply submitted by the respondent No.4 Shri R.D. Sharma maintaining his locus standi as the matter concerns the property put to sale by RFC where he was sought to be excluded from consideration in an arbitrary and unreasonable manner; and that he was not asking for a mandamus for acceptance of his bid as it is but for directions to the respondent RFC to act fairly and reasonably to secure maximum price; and that in the face of two higher bids, the property should not be permitted to be transferred to a person who had offered lower price; and that he had not concealed any fact. The petitioner has also referred to the fact of the Corporation stating only Rs.1.00 lacs as the maximum offer received in the third auction notice even though the offer of Rs.1.76 lacs was alive on that date. It has also been submitted that only once the auction was held on 13.07.1987 and thereafter by notice, tenders were invited for offering higher price than the one available before the Corporation and that was only an offer for disposing of the property by negotiating over and above the price offered at the auction; and in view of the procedure adopted by the RFC, the petitioner also has a right to make an offer so long as the bid

was not accepted and the auction was not concluded and undisputedly the petitioner's offer was made and it reached the RFC before the purported action of acceptance of the offer of the respondent No.4 and it was expected of RFC to invite all the offerers for negotiations and to accept the offer of person who would make the highest bid at the negotiations.

It may also be pointed out that the reply of the RFC in Writ Petition No.1841/1989 was filed on 28.07.1988 and prior to that the respondent No.3 Shri R.D. Soni had filed an affidavit on 17.07.1989 in this writ petition stating that it was not in the terms and conditions on which auction was held on 13.07.1987 that the liability of RIICO was to be borne by the purchaser; that he increased his offer to Rs.1.76 lacs and never backed out; that he was called for further negotiations regarding his offer of Rs.1.76 lacs on 19.04.1989 and that he did go in response to the call for negotiations and on being asked to give in writing whether he still stood firm on his offer of Rs.1.76 lacs, he gave in writing on 19.04.1989; and that he was not conveyed any decision after 19.04.1989 and he came to know about the developments of the deal by RFC with Shri R.D. Sharma only upon service of copy of the writ petition and that he was still firm on his offer of Rs.1.76 lacs.

SUBSEQUENT DEVELOPMENTS IN THE WRIT PETITIONS

Both the writ petitions aforesaid remained pending for hearing and ultimately an order was passed by this Court on 17.04.2001 directing the counsel for RFC to take instructions whether in case the petitioner deposits the amount or makes offer for making payment as given by the bidder and to pay the interest over the said amount to be paid to the bidder, whether such proposal would be accepted by RFC? Though this order essentially purports to refer to the borrower as the petitioner but has been scribed in the order-sheet concerning writ petition of the subsequent offerer Shri Govind Puri. Be that as it may, when no response from the respondent-RFC came to the fore, and both the matters were taken up on 12.12.2003, this Court directed the counsel for the respondent-RFC to determine the amount that was finally payable by the petitioner and apprise the court on the next date so that the matter could be concluded. This order was made at the submission of the counsel for the borrower that he was prepared to pay the amount of debt to RFC as claimed alongwith interest upto the date of take over and was also prepared to compensate the successful bidders who had deposited the amount with RFC. The order dated 12.12.2003 reads thus:

‘’12.12.2003

HON’BLE MRS. JUSTICE GYAN SUDHA MISRA

Mr. J.P.Joshi,) for the petitioner
Mr.M.S.Singhvi)
Mr.B.D.Sharma) for the respondents
Mr.S.G.Ojha)

Learned counsel for the petitioner, Mr.M.S.Singhvi submitted that the petitioner is prepared to pay the amount of debt to Rajasthan Financial Corporation, as claimed alongwith interest upto the date of take over, and the petitioner is also prepared to compensate the successful bidders who have deposited the amount with Rajasthan Financial Corporation.

Previously also in the connected matter being S.B.Civil Writ Petition No.1841/1989, an order was passed by the Coordinate Bench of this Court on 17.4.2001 as to whether respondent is prepared to accept the offer made by the petitioner for settlement of disputes involved. The matter has been lying dormant thereafter, as no progress has been made.

Counsel for the respondent-R.F.C. is directed to determine the amount which is finally payable by the petitioner and apprise the Court on the next date so that matter can be concluded.

At the request of learned counsel for the parties, the writ petitions thereafter be listed on 7.1.2004.’’

In response to the aforesaid order dated 12.12.2003, the respondent-RFC has submitted an ‘‘Additional Affidavit’’ of its Deputy Manager (Law) stating that according to the

procedural guidelines of RFC, a unit could be revived at the hands of the original borrower if he was prepared to pay at least 25% of the outstanding immediately and when for the payment of balance, a clear understanding is reached, the possession could be handed over back to the original borrower. It has also been stated by RFC that on the basis of its calculation, outstanding balance as on 01.01.2004 was Rs.8,64,476/- which was calculated with simple interest for possession period from 30.10.1985 to 31.12.2003. In the additional affidavit, after reference to the order dated 12.12.2003, it has been stated on behalf of RFC,-

> ‘’2.On earlier also, a order was passed as to whether respondent is prepared to accept the offer made by the petitioner for settlement of disputes involved. The Hon’ble High Court directed to determine the amount which is finally payable by the petitioner and apprise the Court on the next date so that matter can be concluded.
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> 3. That according to the procedures and Guidelines of the Rajasthan Financial Corporation, unit can be revived again in the hands of the original borrower, and the original borrower is prepared to pay at least 25% of the amount outstanding immediately, and for the repayment of balance, a clear understanding is reached, the possession can be handed over back to the original borrower. In such cases the original borrower will have to pay simple interest at effective rate (excluding penal) for the period the unit remained in possession of the Corporation.
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> 4. That the Corporation has calculated the outstanding balance as on 01-01-2004. As per the calculation simple interest for possession period

> dated 30-10-85 to 31-12-2003, the total amount outstanding against petitioner is Rs.8,64,476/- and if the petitioner pays the outstanding balance amount, possession can be revived.''

The matters were thereafter taken up on 22.07.2005 and in response to the affidavit filed on behalf of the RFC, learned counsel appearing for the petitioner Shri Govind Puri in writ petition No.1841/1989 submitted that the said petitioner has no objection if the matter is settled out by the original borrower M/s. Priya Plastics with the respondent-RFC but the learned counsel appearing for the respondent No.4 expressed his objections and prayed for time to put response to the affidavit filed by RFC. Learned counsel appearing for the borrower M/s. Priya Plastics also sought time to place his response to the affidavit submitted by RFC.

The petitioner M/s. Priya Plastics has responded by filing an application on 11.08.2005 accepting the propositions stated by the RFC and working out the amount due upto 01.07.2005 to the tune of about Rs.9,00,063/- has submitted that he had already paid Rs.31,000/- by Demand Draft dated 18.12.2003 in his offer of settlement and was offering further Rs.2 lacs to cover up 25% of the amount due to the Corporation and was prepared to pay the remaining amount within a period of six months from the date the possession of

the unit be handed over to him. The petitioner has prayed that the Corporation may be directed to accept the amount tendered by him and to hand over possession of the unit to him. After referring to the affidavit of RFC, the petitioner has stated in his application,-

> ''2. That the petitioner humbly submits that he is prepared to pay the dues of the corporation. As per the affidavit dated 03.03.2004, the total amount calculated by the corporation worked out to 8,64,476/- as on 01.01.2004. After adding interest upto 1st of July 2005, the amount works out to Rs.9,00,963/- (approximately).
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> 3. That the petitioner is prepared to pay this amount. To show his bonafides the petitioner tenders herewith a demand draft in the sum of Rs.2,00,000/-. The petitioner has already paid Rs.31,000/- vide demand drafts dated 18.12.2003 in his offer of settlement to the respondent corporation. The petitioner encloses herewith photocopy of the demand drafts dated 18.12.2003 for Rs.31,000/- and the same is marked as **Annexure-9.** Photocopy of the demand draft for Rs.2,00,000/- is submitted herewith and marked as **Annexure-10.** The total amount comes to Rs.2,31,000/- which is more than 25% of the total amount due to the Corporation.
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> 4. That the petitioner is prepared to pay the remaining amount with in a period of 6 months from the date the possession of the unit in question is handed over to him.
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> It is, therefore, prayed that the corporation may be directed to accept the amount tendered by the petitioner and it may be directed to hand over possession of the unit in question to the petitioner. The petitioner undertakes to repay the remaining amount with in 6 months.''

The petitioner has also submitted an additional affidavit that he tendered Pay Order for Rs.2 lacs drawn on Vijya Bank to the RFC with his application dated 26.10.2005 but the same was returned by the respondent-RFC with their letter dated 27.10.2005. Copies of application dated 26.10.2005, letter dated 27.10.2005 and the Pay Order dated 24.10.2005 have been produced as Annexure-11, 12 and 13 respectively.

The contesting respondent Shri R.D.Sharma on the other hand has submitted a detailed application in response to the affidavit submitted by RFC. The respondent has contended that RFC had merely mentioned procedure and guidelines for revival of the unit at the hands of the original borrower. Then, the decision in earlier writ petition No.326/1986 has been referred and placed on record as Annexure-R4/3 with the submissions that the said order dated 27.02.1987 has become final and, therefore, the petitioner has no locus standi to maintain the present writ petition when the prayer for re-delivering the possession of the factory back in the hands of the petitioner and prayer for re-schedulement had been rejected. It has also been maintained that the answering respondent gave his bid after considering the above judgment of this Court and the additional affidavit filed by the RFC and the earlier prayer made by the petitioner would have to be considered in the light of the said decision. The respondent

has submitted that there are exceptional facts and circumstances for which the general procedure and guideline as put by the RFC would not be applicable. It has been maintained that the position of the respondent No.4 in this case is not only of a successful bidder but of a purchaser of the property from the owner of the property i.e. RFC through the agreement dated 19.05.1989 (Annexure-7 in writ petition No.1841/1989). According to the contesting respondent, after ascertaining that no litigation was likely to be fastened with the unit and taking into account the valuation and outstanding, he made an offer of Rs.1.66 lacs and the RFC cannot now back out. While referring to the reply filed by the RFC in the writ petition, it has been submitted that the RFC has confirmed the offer of answering respondent to be a genuine and valid offer without loss of words. It has been pointed out that for a period of about 22 years, the petitioner has not deposited anything against the outstanding and he came out with deposit of about Rs.32,000/- on 24.12.2003 against some scheme. According to the respondent, the petitioner has violated the sanctity of the loan agreement and had been a deliberate defaulter and, therefore, it is to be considered whether the petitioner is entitled to avail benefit of general norms prescribed under some scheme? It has been questioned that in the light of these special features and the fact that the prayer made by the

petitioner for delivery of possession had been rejected by this Court, could the unit be placed with it again?

The respondent has thereafter pointed out that the ignorance shown by the petitioner about the action taken by RFC after dismissal of his first writ petition was not correct; and has placed on record copies of letters dated 03.08.1987 and 28.02.1989 addressed by the petitioner to the RFC as Annexures R4/4 and R4/5 respectively showing that the petitioner had knowledge about proposal of Rs.1.08 lacs; and so also of the bid of Rs.1.76 lacs. The respondent has pointed out that the cause of action to maintain the present writ petition has been stated with reference to the alleged knowledge derived from the writ petition filed by Shri Govind Puri but the said Shri Govind Puri has been brought up by the petitioner only and in that regard, a copy of the letter dated 28.12.1998 addressed by Shri Govind Puri to RFC has been placed on record as Annexure-R4/6 and it has been pointed out that the RFC has also maintained that two petitioners were in collusion. It has also been submitted that the stay order was passed on 01.06.1989 for not transferring the unit to anyone else but there was ample opportunity available with the petitioner of repayment of dues that was not availed of for years together. It has also been urged with reference to Section 25 of the State Financial Corporations Act, 1951 (‘the

Act of 1951') that the loan was granted for a term of eight years and in view of the lapse of time in the present case, there could be no question of further extending the loan for another ten years; and that placing possession again in the hands of the defaulter would be against the aims and objects of the Act. The respondent has thereafter made an averment in paragraph-7 of this application increasing his offer of Rs.1.66 lacs to Rs.3.32 lacs in the following words:-

> ''7. **Response** :- That In view of the over burden created due to default in payment by the defaulter (petitioner) himself with no fault on the part of the R.F.C., extending a helping hand with R.F.C. in such a situation and so also securing justice in this exceptional matter, this respondent No.4 graciously increases his offer of Rs.1,66,000/- to Rs.3,32,000/-. If it is assailed, the respondent No.4 is ready to pay this amount in one lot.''

The contesting respondent has further submitted that the order for delivering possession of the unit to him has already been passed by the RFC by agreement dated 19.05.1989 that could not be lifted and could not be given to the petitioner. With such response, the respondent has put his strong protest to the additional affidavit filed by the RFC and has submitted that he could not be made liable and the RFC cannot deviate from its promise as contained in the settlement dated 19.05.1989 even if the price of factory has gone up. It

has been suggested that the answering respondent cannot be thrown out from the entire issue and even if the RFC is determined to place the unit in the hands of the petitioner, he simultaneously reserves his rights matured with the agreement dated 19.05.1989. Both the petitions have been prayed to be rejected with heavy costs.

The answering respondent has also submitted a reply to the application filed by the petitioner and it has been submitted that the averment in paragraph-4 of additional affidavit of RFC of revival of unit on payment of outstanding balance amount has strongly been opposed by the answering respondent as the same was directly in contradiction of the replies filed by the RFC in both the writ petitions; that additional affidavit of the RFC and the application moved by the petitioner cannot take away basic features, substance and legal implications involved in these matters and the sale made to the answering respondent cannot be whittled down at this belated stage and the period consumed by the petitioner cannot stand to his benefit; and the Corporation as instrument of the State has to act with all fairness and it would be necessary to clarify as to whether in the exceptional circumstances of this case, those provisions of the guidelines would be applicable to the petitioner or not?

It was now the turn of the RFC to come out with explanations and the same Deputy Manager (Law) of RFC has filed two additional affidavits, one on 19.11.2005 and another on 01.12.2005. In the affidavit dated 19.11.2005, it has been submitted about the additional affidavit dated 03.03.2004 that the respondent-RFC had only mentioned the procedure and guidelines but not made any offer to the petitioner and the matter is sub-judice before the Court and in the case of unit in question, sale has taken place and thereafter stay was granted by the court and that RFC has replied the queries raised by the court as per directions of the court and calculation as per simple interest too was given as per directions of the court. Paragraphs-3 and 4 in the affidavit dated 19.11.2005 read thus:

> ‘’3. That the respondent R.F.C. has only mentioned the procedure and guidelines of the R.F.C. But not made any offer to the petitioner and the matter is sub-judice before this Hon’ble High Court and in case of the petitioner’s unit, the sale has taken place and thereafter stay order was granted by this Hon’ble Court.
>
> 4. That the respondent R.F.C. has replied the queries made by this Hon’ble Court as per the direction of this Hon’ble court. The calculation as per the simple interest too has been given as per the directions of this Hon’ble Court.’’

Thereafter even this explanatory affidavit has been explained as it was obviously containing a wrong statement

that the calculation was made as per the directions of this Court; because this Court had never given any direction for any particular calculation in any particular manner and what was required of the RFC was, as noticed from the order dated 12.12.2003, to determine itself the amount finally payable by the petitioner and apprise the court about the same. In the additional affidavit dated 01.12.2005 the same Deputy Manager (Law) has now explained that the amount was calculated by RFC as per its norms and the word ‘’direction’’ was mentioned in the earlier affidavit due to inadvertence. It has also been pointed out that only the sale was approved in favour of Mr. R.D.Sharma and no contract was concluded between RFC and Mr. R.D.Sharma. Paragraph-3 and 4 in the affidavit dated 01.12.2005 read thus:

> ‘’3. That the R.F.C. has calculated the amount according to the norms of R.F.C. and submitted before this Hon’ble Court and said that up to 01-01-2004 the amount Rs.8,64,476/- was due. The calculation was made as per the norms of the R.F.C. not as per the directions of this Hon’ble Court. The word ‘’direction’ has been written in Para No.4 of the affidavit submitted on 18-11-2005 was due to inadvertence and bonafide mistake as the queries were replied by the R.F.C. as per the directions of this Hon’ble Court. Therefore, due to bonafide and clerical mistake the calculation as per the simple interest too has been given as per the direction of this Hon’ble Court is written mistakenly and for that answering respondent feels extreme sorry.

> 4. That it is also relevant to mention here that only the sale was approved in favour of Mr. R.D.Sharma. But no contract was concluded between the R.F.C. and Mr.R.D.Sharma.''

Further additional affidavit has been filed on 06.03.2006 in relation to the factual aspect about the bids received and the contesting respondent No.4 has also filed a reply thereto. However, the same having co-relation with the bids, shall be referred at the appropriate place.

Learned counsel for the parties have been heard at length and the entire record has been scanned through.

THE OFFERS SAID TO BE AVAILABLE WITH RFC

A comprehension of the matter makes it apparent that both these writ petitions by the subsequent offerer Shri Govind Puri and by the borrower M/s. Priya Plastics have been filed questioning the proposed sale of assets to the respondent No.4 Shri R.D.Sharma for Rs.1.66 lacs essentially on the ground that the RFC had with it higher offers, that of Rs.1.76 lacs from Shri Rani Dan Soni and that of Rs.2.01 lacs from Shri Govind Puri and there was no justification for not considering such offers. In relation to the previous bidder Shri Rani Dan Soni it has been maintained that though he put forward a negotiated bid of Rs.1.76 lacs, the terms were put after his bid for bearing the dues of the departments contrary

to the original terms and conditions and that was to dissuade him from the transaction. In relation to the late offerer Shri Govind Puri it has been maintained that without giving him reasonable chance and without responding to his offer, deal was sought to be finalised with Shri R.D.Sharma. In view of the pleadings taken in these writ petitions and the case set up by the respective petitioners, it shall be worthwhile to take up the merit of case in relation to these two offerers.

Case of Shri Govind Puri (petitioner of writ petition No. 1841/1989)

The petitioner of writ petition No.1841/1989 Shri Govind Puri has alleged that when he came to know about the assets being available for sale, he made the offer of Rs.2.01 lacs. The case of the said offerer is fundamentally baseless and deserves outright rejection. It is a different matter that it has been given out in no uncertain terms on behalf of the said petitioner that he had no objection if the matter was settled out by the original borrower with the RFC. However, coming to such settlement proposals later, since the writ petition filed by Shri Govind Puri has been directed against the proposed sale to the respondent No.4 Shri R.D.Sharma and the sale was prevented for the interdict issued herein, before giving a quietus to writ petition No.1841/1989 it is required to be noticed that there is no substance in this writ petition.

As shown on record, the assets In question had been advertised for sale at least thrice over; and if at all the said petitioner was having any concern or interest, nothing prevented him from putting forward his offer in response to such advertisements. Timing of the offer made by the said petitioner on 03.05.1989 makes it clear that the same was intended only to meddle with and obstruct the sale in favour of the respondent No.4. Moreover, the assertions as made in the application dated 03.05.1989 show that the said petitioner has stated not only about the approximate value of the fixed assets, he has also pointed out the value of raw material and finished goods available in the factory in question. Such facts were never stated by RFC in any advertisement and the only definite source of such information could have been none else than the borrower M/s. Priya Plastics. Therefore, the allegation that the borrower put him forward cannot be ignored as conjectural.

Then the said petitioner, despite making a bold offer of Rs.2.01 lacs on his alleged acquiring knowledge about RFC having invited applications, has not cared to advance even a token earnest money. The respondent Financial Corporation has yet not thrown him out and requested him to contact Head Office with 10% security. However, he has merely addressed two letters on 20.05.1989 but without a single penny payment.

It has specifically been pointed out that the said petitioner made a submission on 28.12.1998 that if the factory was given to the original owner he had no objection and would withdraw his case (Annex.R.4/6 in writ petition No.2359/1989). The offer by the petitioner Shri Govind Puri had never been of any substance nor could be termed to be a genuine offer so as to compel the RFC to even take cognizance thereof.

Case of respondent No.3 Shri Rani Dan Soni

It is in relation to the said offerer Shri Rani Dan Soni, respondent No.3 in both the writ petitions, that it has been emphatically maintained that he made the offer in the first place of Rs.1.08 lacs and increased the offer to Rs.1.76 lacs but the terms and conditions that were put to him after his offer of Rs.1.76 lacs were materially different from the terms stated in the auction notice and it was a device to dissuade him. The submission is not correct and the said offer by the respondent No.3 also turns out to be a ruse.

Entire case has been set up as if the RFC materially altered the condition regarding bearing of the dues of RIICO and other departments and a heavy reliance has been placed on conditions of auction (Annex.8 in writ petition No.1841/1989). It is true that in the said conditions, it was stated that the dues of the State Electricity Board etc. shall be borne by the purchaser whereas the dues of RIICO of land-

shed shall be borne by the RFC. However, the fact remains that the said terms and conditions (Annex.8 of writ petition No.1841/1989) were of the first auction dated 13.07.1987 and therein Shri Rani Dan Soni had made an offer of Rs.1.08 lacs and then he increased his offer to Rs.1.15 lacs in negotiations as is borne out from his letter dated 18.07.1988 (Annex.9/2 in writ petition No.1841/1989) but the sale was not finalized on the said offer of Rs.1.15 lacs and instead the RFC proceeded to invite further offers over and above the offer of Rs.1.15 lacs received from Shri Rani Dan Soni by the advertisement dated 31.08.1988 (Annex.10). Admittedly, the said Shri Soni (respondent No.3) entered into negotiations in response to the aforesaid notice dated 31.08.1988 and increased his bid to Rs.1.76 lacs. In the said notice dated 31.08.1988 the RFC has specifically given out, -

> "उक्त ईकाईयों के विरूद्ध रीको विद्युत मंडल जल की बकाया राशि को वहन निगम नहीं करेगा ।"

When respondent No.3 had made the offer of Rs.1.76 lacs in response to this notice dated 31.08.1988, the Corporation cannot be said to have committed any error in addressing the acceptance letter dated 27/28.09.1988 incorporating the same terms. The grievance raised by the respondent No.3 about the condition of 13.5% interest has

specifically been addressed to and accepted by the RFC correcting it to 12.5% by their letter dated 02.11.1988. The submission, therefore, that RFC acted in any manner to dissuade the respondent No.3 from his offer is not correct.

It appears from the factual matrix that when the respondent No.3 stuck to his contention that RIICO dues would not be borne by him, the deal did not materialise and the RFC had no option but to invite fresh offers and they did so. In response to the fresh notice three bidders came up as is apparent from the bid-sheet dated 23.03.1989. The respondent No.4 Shri R.D.Sharma initially made a bid of Rs.1,10,000/- whereas one Shri Pramod Kothari made an initial bid of Rs.1,25,101/-. There was yet another bidder putting the offer of Rs.1.10 lacs but he did not participate further. After biddings between Shri R.D.Sharma and Shri Pramod Kothari, ultimately the respondent No.4 Shri R.D.Sharma gave out the highest bid of Rs.1.61 lacs. Even then, the RFC did not finalise the matter and instead it was directed that Shri Rani Dan, highest bidder of earlier auction and Shri R.D.Sharma be called for negotiations. It is in this sequence that on 19.04.1989 both Shri Rani Dan Soni and Shri R.D.Sharma were called for negotiations.

It has been maintained by the respondent No.3 Shri Soni that he did visit on 19.04.1989 and stood firm on his offer

of Rs.1.76 lacs and gave so in writing. This assertion by respondent No.3 in his affidavit is falsified by his letter dated 19.04.1989 produced by the respondent-RFC as Annexure-R1/4 with their reply in writ petition No.1841/1989. The said respondent No.3 had specifically repeated his terms including that of not bearing the liability of RIICO dues and stated that if RFC was not finalising on those conditions, then his amount lying in deposit with the RFC be returned with interest.

Having examined the facts surrounding the said offer of Rs.1.76 lacs by the respondent No.3, this Court is satisfied that the respondent No.3 was not serious about such offer and rather he was only seeking to somehow wriggle out of the deal. The contention that the RFC had an offer of Rs.1.76 lacs at hands does also turn out to be bereft of substance.

CASE OF THE BORROWER M/S. PRIYA PLASTICS

It has already been noticed that the alleged offers of Shri Govind Puri and Shri Rani Dan Soni cannot be accepted as genuine or serious offers in this matter and their offers of Rs. 2.01 lacs and Rs. 1.76 lacs respectively turn out to be more of pretence and lacking in basic substance. The petitioner M/s Priya Plastics has filed the writ petition fundamentally on the basis of the aforesaid two offers only and it has been alleged that the property was sought to be transferred to respondent No.4 who has offered least of the

price. Rejection of the case of aforesaid two offerers knocks the bottom out of the case of petitioner.

Moreover, when the conduct of the borrower-petitioner M/s. Priya Plastics is examined, it is more than apparent that the petitioner could only be termed as a chronic defaulter. A look into the past conduct of the petitioner, as discernible from the averments taken in the writ petition, shows that despite availing of a loan of Rs.1,27,000/- in the month of March, 1981 and allegedly being ready for production in the month of September, 1981, the unit stopped production after six months; and in the name of revival/expansion, the petitioner availed further loan to the tune of Rs.31,000/- in the month of October, 1982 and yet closed down within 6-9 months. The Financial Corporation had no option but to take over after the petitioner failed to make payment of the instalments. The petitioner-borrower approached this Court by way of writ petition No.326/1986 with the prayers that the action of taking over and issuance of sale proclamation be quashed; and in accord with rehabilitation programme issued by the Industrial Development Bank of India, possession of the factory may be handed over to the petitioner with reschedulement of loan instalments. This Court noticed the facts that even the additional demand made by the petitioner was satisfied by the Corporation and additional loan was extended and yet the

petitioner failed to make repayment and when the loan outstanding reaching Rs.1,91,519/-, the RFC took over. Significant fact is that an offer was made by learned counsel for RFC even during the course of earlier writ petition that if the borrower would deposit some amount, be it Rs.20,000/- or even little less, the RFC might be advised not to take further action and release the factory. However, the petitioner did not avail even of such a gracious offer. This Court found that no relief could be granted to the petitioner and the petition was dismissed. This Court has recorded and observed,-

> ''Not only that, even at the time of the commencement of the arguments, Mr.N.M.Lodha, learned counsel for the Corporation made an offer that he would advise his client not to take further action u/s.29 of the Act and release the factory if the petitioner was prepared to deposit some amount, be it Rs.20,000/- or even a little less than that. Mr.M.S.Singhvi, learned counsel for the petitioner after sought time to seek instruction and then frankly conceded that the petitioner is not in a position to make any payment at present.
>
> Thus, the prayer of the petitioner for providing rehabilitation and reschedulement also cannot be considered and no relief can be granted.
>
> The writ petition is dismissed. Costs are made easy.''

The averments as taken in paragraph 9 of the writ petition that the petitioner-borrower was not aware about the proceedings after 27.01.1987 are incorrect; and the face of innocence as put forward in the writ petition is artificial and pretentious; and cannot be termed bona fide. The contesting respondent No.4 has placed on record two letters dated 03.08.1987 and 25.03.1989 as Annexures R4/4 and R4/5; and both of them show clearly that the petitioner was keeping track of all the proceedings and was aware of the bids received by the RFC. Insistence of the petitioner in the aforesaid two communications was also to extend concessions to it and to hand over the factory. The petitioner has framed the entire writ petition as if the facts were noticed only upon receipt of the notice of the aforesaid writ petition filed by Shri Govind Puri and it is apparent that the petitioner has knowingly taken incorrect averments and posed innocence.

Learned counsel for respondent No.4 Mr. Sharma has strenuously contended on the conduct of the petitioner-borrower, to which learned counsel Mr.Singhvi appearing for the borrower has submitted that even if there was any incorrect statement, that does not relate to any material fact and suppression, to operate against the rights of the petitioner, ought to be of material fact. The submissions made on behalf of the petitioner are not correct. The writ petition itself has

been framed and filed with pretence and its very basis had been fundamentally fallacious.

Apart from such shortcomings in the conduct of the petitioner qua the proceedings, even on merits the propositions as stated by the petitioner in the writ petition are not convincing either. The petitioner-borrower, after the bid of respondent No.4, for the first time came out with the application dated 05.07.1989 in writ petition No.1841/1989 suggesting that either the unit be handed over to said petitioner Shri Govind Puri on the amount offered by him or, as the situation had allegedly changed, the unit be restored to the borrower for the purpose of running the industry and repayment of the loan. However, again the prayer was to waive the penal interest and reschedule the repayment but this prayer was hollow and not supported by even a token payment. The writ petition No.2359/1989 was filed later on but again with the prayer, so far the petitioner is concerned, that he may be permitted to make payment of 25% of highest bid received by RFC and the balance outstanding be converted into a long-term loan and penal interest be waived.

The overall conduct of the petitioner makes it apparent that the only intention while putting forward his case in both the writ petitions has been to somehow obstruct finalisation of

the bid in favour of the respondent No.4. The case of the petitioner as set forth in the writ petition remains meritless.

CONDUCT OF THE PROCEEDINGS BY RFC

Even while rejecting the case of the petitioner M/s.Priya Plastics, the petitioner Shri Govind Puri and so also the respondent No.3 Shri Rani Dan Soni, this Court has examined the proceedings conducted by the RFC and this Court is satisfied that the conduct of the proceedings by the RFC and acceptance of the bid of respondent No.4 Shri R.D.Sharma at Rs.1.66 lacs do not suffer from any infirmity.

Learned counsel for the contesting respondent has rightly relied upon the decisions of the Hon'ble Supreme Court in the case of Karnataka State Industrial Investment & Development Corpn. Ltd. Vs. Cavalet India Ltd. and others: (2005) 4 SCC 456 and Haryana Financial Corporation and another Vs. Jagdamba Oil Mills and another : (2002) 3 SCC 496 to submit that in such matters the only relevant consideration would be of reasonableness; and in the matters between the financial corporation and its debtor, a writ court has no say except in two situations: (a) where there is a statutory violation on the part of the Corporation, or (b) where the Corporation acts unfairly i.e. unreasonably. No case of any statutory violation has been suggested in the present case and so far reasonableness is concerned, there is nothing on

record for which RFC could be considered to have violated the norms of fairness and reasonableness.

There has only been one aspect of the matter creating some doubt about fairness of the proceedings, and that has been of the RFC stating in its last advertisement, said to be dated 18.03.1989, that the maximum received offer in respect of the petitioner's unit was Rs.1 lac, although the RFC had received the offers of Rs.1.08 lacs, revised to Rs.1.15 lacs and then revised to Rs.1.76 lacs by the respondent No.3 Shri Rani Dan Soni; and so also next higher offers from other bidders that were also above Rs. 1 lac. The RFC has maintained in its replies submitted in these writ petitions that the advertisements were issued thrice over. However, it appears that after the respondent No.3 Shri Rani Dan Soni failed to honour his bid and the Head Office of RFC instructed for forfeiting the earnest money on 31.01.1989 the unit was put to yet another auction on 02.03.1989 when one Shri Rajendra Kumar offered Rs.50,000/- and increased the offer to Rs.1 lac during negotiations; and this bid of Rs.1 lac was considered last valid bid available with the RFC. These facts are borne out from the letter dated 25.04.1989 addressed by Jodhpur Branch Office of RFC to the Head Office at Jaipur and has been placed on record as Annexure-R9/4 with the last additional affidavit filed by the respondent No.4. Be that as it

may, having examined the actions of RFC, this court is satisfied that even if there had been some error in the last advertisement, the RFC cannot be said to have acted unfair or malafide. The RFC has also explained in its additional affidavit dated 06.03.2006 that Shri Rani Dan Soni, highest bidder of earlier auction and Shri R.D.Sharma, higher bidder of last auction were called for negotiations and as per practice, only the highest bidders are called and, therefore, the second highest were not called. Having examined the bid-sheets and so also the attempts made by RFC, this Court is satisfied that the RFC has attempted its best to extract maximum bid and in the face of the bids earlier received the RFC cannot be said to have acted unreasonably or mala fide in accepting the negotiated bid of Rs.1.66 lacs by the respondent No.4 particularly when it is noticed that prior to it, the highest proposal was of Rs.1.76 lacs and such proposer, the respondent No.3, was keenly been pursuing his efforts to wriggle out. Learned counsel for the contesting respondent has referred to the decision in U.P. Financial Corporation and others Vs. Naini Oxygen & Acetylene Gas Ltd. and another: (1995) 2 SCC 754 wherein the Hon'ble Apex Court has held in relation to the Financial Corporation that,-

> " Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the court or a third party to substitute its decision, however more

> prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable."

In view of the bonafide conduct of RFC in the present matter, the feeble suggestions made by the petitioners imputing unreasonableness on the part of RFC deserve to be, and are rejected.

SUBSEQUENT DEVELOPMENTS AND EFFECT THEREOF

Had there been no subsequent developments in these writ petitions, ordinarily, the consequence of discussion aforesaid would have been of dismissal of both the writ petitions. However, significant subsequent developments, events and propositions have come up and have been placed on record before this Court as noticed hereinbefore; and they cannot be ignored.

As noticed above, on 17.04.2001 this Court posed the question on the stand of RFC in case the payment was forthcoming. On 12.12.2003 it was specifically given out by the borrower that he was ready to pay the amount of debt to RFC and also to compensate the successful bidders; and upon the query of this Court, RFC came out with the proposition in their additional affidavit dated 03.03.2004 that if 25% of the outstanding is paid immediately and for balance, an

understanding is reached possession could be handed over to the borrower, subject of course to the borrower making payment of simple interest during possession period and it has been stated in no uncertain terms that upto 31.12.2003 total outstanding against the petitioner was Rs.8,64,476/- and if the petitioner would pay the outstanding balance amount, the possession could be revived. The petitioner accepted this proposition and having already made payment of Rs.31,000/- on 18.12.2003, offered further payment of Rs.2 lacs which of course was declined to be accepted by the RFC for the matter being sub judice. Such offer of payment had been made by way of demand draft/pay order and cannot be said to be bogus.

However, the respondent No.4 has taken the stand squarely cutting across such proposition of settlement between RFC and the borrower with the submissions that a legal right exists in him; that the petitioner was not entitled for any relief because of his conduct and because of dismissal of his earlier writ petition; that the RFC cannot take a stand contrary to its earlier replies; and that the settlement proposal now made is not sanctioned by law. The RFC has of course attempted to suggest that no offer was made to the petitioner by way of the affidavit dated 03.03.2004 as the matter is sub judice but then, has also clarified that only the sale was

approved in favour of the respondent no.4 Shri R.D.Sharma and no contract was concluded between him and the RFC.

Having examined the conduct of the parties and their respective legal rights, this Court is constrained to observe that though the earlier conduct of the borrower-petitioner had not been fair and he seems not to have come to the court with clean hands, and the RFC has not acted unreasonably, and even respondent No.4 was bona fide in his offer and acceptance of his offer does not appear to be invalid, but had it been a case of simple concluded contract and of simple transfer of property, may be the subsequent propositions between the RFC and the borrower would not have had any bearing in the matter. However, in view of the subject matter of litigation, such propositions cannot be ignored.

Learned counsel for the contesting respondent has strenuously contended with reference to Section 29 of the State Financial Corporations Act, 1951 that in exercise of powers thereunder, when the RFC had taken over the management and possession of the industrial concern, it became the owner thereof and exercising its right, the RFC had put the property for sale, and, therefore, the debtor has no right to challenge such action and cannot seek any relief in this writ petition. Learned counsel has also submitted with reference to the powers of a mortgagee in selling the

mortgaged property and submitted that when such sale has been carried out by the RFC, the rights, even if there be any of the mortgagor i.e. the petitioner have come to an end. Learned counsel has also referred to the provisions of Transfer of Property Act, 1882 and Articles 61 and 62 of the Limitation Act, 1963 to submit that when the mortgagee has transferred the property; even the suit could have been filed by the mortgagor only within 12 years and in the present case, possession having been taken in the year 1985 and transfer having been made in the year 1989, the proposition as now put forward by the petitioner-borrower is even otherwise hopelessly barred by limitation. Learned counsel also submitted with reference to Section 25 of the Act of 1951 that the RFC could grant loan to an industrial concern, repayable within a period not exceeding 20 years; and in the present case, the loan having been granted in the year 1985 if any settlement is now brought about for deferred repayment, that would be exceeding maximum period of 20 years as contemplated by the statute and for this reason too, any repayment proposal cannot now be accepted.

The aforesaid submissions, far too stretched, by the learned counsel for the respondent No.4 are baseless, to say the least. Powers under Section 29 of the Act of 1951 are essentially the powers meant for enabling a Financial

Corporation to enforce the security available with it for recovery of its dues and thereunder, even if the RFC acts as an owner, it does not act in derogation of its rights as a mortgagee and the borrower's rights as mortgagor; and till the sale was completed in all respects in his favour, so far the bidder like the respondent No.4 is concerned, he has only an inchoate right not higher than that of an offerer.

Learned counsel for the contesting respondent has referred to the decision of the Hon'ble Supreme Court in New Kenilworth Hotels (P) Ltd. Vs. Ashoka Industries Ltd. and others: (1995) 1 SCC 161 wherein the appellant had offered bid by tender offering to purchase the hotel constructed by the respondent Ashoka Industries Ltd. taken over by the Financial Corporation. The said offer had not become final by virtue of the orders of the court; and the High Court extended option to the respondent-Ashoka Industries Ltd. to exercise the rights of redemption under Section 60 of the Transfer of Property Act and in furtherance thereof, they had filed a suit that was pending. The appellant New Kenilworth Hotels (P) Ltd., though became a licensee under the arrangement made pending the sale of the property yet, having regard to the rights available in law, the Hon'ble Supreme Court held that the appellant was not a necessary party to be heard before

order was passed by the High Court in writ petition directing Ashoka Industries to exercise the rights of redemption under Section 60. The Hon'ble Supreme Court observed,-

> ''Since the appellant had only an inchoate right it does not get any higher right than of a mere offerer for its consideration before sale is effected. As seen, there is no sale which is materialised. Though under Section 29 the O.S.F.C. acts as an owner in putting the property to sale, it does not act in derogation of the right of the O.S.F.C. as a mortgagee and Ashoka Industries as mortgagor.''

The Hon'ble Supreme Court also referred to the previous decision in Maganlal Vs. Jaiswal Industries, Neemach : (1989) 4 SCC 344 wherein it was held that mortgagor has right of redemption even after the sale has taken place pursuant to the final decree, but before conformation of such sale. Explaining the parameters of the rights of the Financial Corporation under Section 29 of the Act of 1951, the Hon'ble Supreme Court has held, -

> ''As stated earlier, the limited right given to the Corporation under Section 29 is to act as an owner to bring the properties of the defaulter to sale and not in derogation of the right under Section 60. The fiction of law under Section 29 does not have the effect of wiping out the statutory right of redemption under Section 60 of the T.P. Act. Therefore, the right of the mortgagee still subsists and that thereby the mortgagor is entitled to exercise the right under Section 60 of the T.P.Act.''

The ratio aforesaid operates squarely against the contentions sought to be urged by the contesting respondent in the present case. Similarly the observations by the Hon'ble Supreme Court in the case of Gajraj Jain Vs. State of Bihar and others : (2004) 7 SCC 151 relied upon by the learned counsel for the petitioner also make it clear that the equity of redemption exists in favour of the mortgagor and mere agreement for sale of assets cannot extinguish it. The Hon'ble Supreme Court observed,-

> "Under Section 60 of the TP Act, equity of redemption existed in favour of the Company. A mere agreement for sale of assets cannot extinguish the equity of redemption; it is only on execution of conveyance that the mortgagor's right of redemption will be extinguished."

In the present case, the sale having not become final, the agreement and the deed of conveyance having not been executed and possession having not been delivered, this Court is clearly of opinion that the respondent No.4 has no such right for which it could be permitted to raise objections against the settlement proposal between the RFC and the petitioner; and, the RFC and the borrower are not precluded from entering into settlement for re-payment of loan and for revival of industry.

The objections with reference to Section 25 of the Act of 1951 and Articles 61 and 62 of the Limitation Act are fundamentally misconceived for the simple reason that though the unit was taken over in the year 1985, ever since the year 1989 the matter is sub judice before this Court with a stay order operating and sale in favour of the respondent No. 4 not becoming final. In any case, the borrower on 12.12.2003 before this Court in no uncertain terms made the offer for settlement and the RFC also responded positively with its affidavit dated 03.03.2004. Ever since then, the matter has remained pending for consideration of the proposals and sur-proposals and then to deal with the objections of the respondent No.4.

The respondent No.4 is also not correct in his assertion that the earlier decision dated 27.02.1987 in writ petition No.326/1986 puts curtains on the rights of the borrower. This court is clearly of opinion that dismissal of the said writ petition cannot result in foreclosure of all the rights of the borrower to accept any other scheme of settlement before the assets are irrevocably transferred; nor RFC is precluded from entering any such settlement that serves the cause of public money and industry both. The decision is conclusive in so far the challenge to take over proceedings and issuance of sale proclamation is concerned. The proposition as made therein

on behalf of RFC to the borrower to make some payment so that restoration of the factory could be considered, if not availed of by the borrower, it could only be relevant for the conduct of the petitioner but cannot be said be operating against him as estopple by judgment. Similarly, the submission that the RFC cannot take any stand contrary to its replies is inapt and rather misplaced. The RFC has not taken any stand that is in conflict with or even incongruous to its replies. Pointing out by the RFC of the defects, defaults and flaws of its debtor and establishing incorrectness of the allegations against its efforts for extracting best sale price has nothing to do with responding to a settlement proposal made by the borrower before the court. The RFC could not have viewed itself as such a persecutor who would not even let its borrower a chance of contrition; and this court is clearly of opinion that RFC has not committed any error or impropriety in putting up its positive response; indicating the elements of settlement.

The submissions of the contesting respondent against the settlement proposal turn out to be wholly fallacious and are rejected.

The respondent no.4 has stated in his application dated 16.08.2005 that he was prepared to increase his offer to Rs.3,32,000/- with down payment. Such offer made by the respondent No.4 may be considered for the purpose of

modalities for settlement between RFC and the borrower but cannot be accepted for the purpose of rejecting the settlement proposal stated by the petitioner-borrower.

Another factor leaning in favour of such settlement proposal is that if the same were not accepted at present and the offer made by the respondents No. 4 of payment of Rs. 3,32,000/- is accepted and the RFC is left to realise the remaining dues from the borrower, it would only be driving the RFC to further avoidable steps for effecting such recovery; although the petitioner has already stated his willingness to make remaining payment within six months of delivery of possession.

Such settlement proposal forming an interface between the RFC and its debtor; serving the cause of survival of industry; and providing likelihood of protection of public money cannot be brushed aside simply because the borrower had been indiscreet in his conduct in the past. The borrower even if being a chronic defaulter and even if having submitted the writ petition with pretence, this Court is of opinion that in the balance of equities, the borrower deserves not to be thrown out in respect of subsequent propositions. This court would not like to proceed with such negative presumptions that a chronic defaulter and concealing petitioner would always be

unrepentant and would never stand any chance to make amends for his follies.

The borrower has submitted in unequivocal terms that he is ready to make 25% payment of the dues stated by the RFC and has undertaken to pay off the remaining dues within six months of the date of possession and has also stated his being prepared to compensate the highest bidder. The propositions now made by the borrower inspire confidence looking particularly to his conduct in making payment of Rs. 31,000/- on 18.12.2003 and in offering further amount of Rs. 2 lacs by way of Demand Draft and Pay Order. In the over all circumstances of the case, this Court finds that accepting of such settlement proposal between RFC and the borrower would be best suited to the interest of industry and would also be in the interest of public money.

Having regard to the over all circumstances of the case, this Court is of opinion that interest of justice will meet if the borrower is asked to make substantial payment to RFC and then to submit an undertaking for repayment of the remaining dues of RFC within six months of handing over of possession and so also to compensate the respondent No.4. The RFC has made the proposition that upon payment of 25% of the dues and upon reaching of understanding regarding remaining payment, unit could be revived in the hands of the original

borrower and has pointed out dues as on as on 01.01.2004 to be Rs.8,64,476/- calculated on simple interest basis. Having regard to the past conduct of the petitioner; so also the offer made by the Respondent No. 4 for payment of Rs. 3,32,000/-; looking to the fact that the petitioner has made a payment of Rs. 31,000/- on 18.12.2003; and looking to the likely outstanding at present, it seems appropriate to direct the petitioner-borrower to make payment of an amount of Rs, 3,00,000/- to RFC; and to submit an undertaking for payment of remaining dues within six months from the date of handing over of possession.

So far the respondent No. 4 is concerned, he made a payment of Rs, 11,000/- and then Rs. 5,600/- to the RFC for purchase of this unit in the year 1989 and then was entangled in this litigation where the borrower was of course not bonafide at its inception. Therefore, it seems appropriate that in order to compensate him, the petitioner-borrower must make a payment of a sum of Rs. 1,00,000/- to the respondent No.4. However, if the respondent No. 4 is not willing to accept such compensation, this amount of Rs. 1,00,000/- must also be paid to the RFC by the petitioner-borrower towards his dues.

CONCLUSIONS:

As a result of the discussion aforesaid, these writ petitions are disposed of in the following manner:

(a) Writ Petition No.1841/1989 stands dismissed;

(b) Prayers as made in Writ Petition No.2359/1989 are also declined; however, this writ petition is allowed in part to the extent of approval of the propositions as made by the petitioner M/s. Priya Plastics on 12.12.2003 before this Court; as stated by the RFC in its additional affidavit dated 03.03.2004; and as stated by the petitioner M/s. Priya Plastics in its application dated 11.08.2005 subject, of course, to the conditions that,-

(i) The petitioner M/s. Priya Plastics shall be required to make payment of an amount of Rs.3,00,000/- (Rupees three lacs) to the RFC within two weeks from today i.e. on or before 19th July 2006 by way of demand draft/pay order;

(ii) The proprietor of the petitioner M/s Priya Plastics shall also be required to submit a

written undertaking before this Court within two weeks with a copy thereof to the RFC that the petitioner shall make payment of the remaining dues of RFC within six months from the date of handing over of possession; and the RFC shall be entitled to notify the petitioner of its reschedulement proposal for such repayment;

(iii) The petitioner shall also be required to make payment of Rs. 1,00,000/- (Rupees one lac) to the respondent No.4 within four weeks from today by way of demand draft/pay order. If the respondent No.4 shall refuse to accept such payment, it shall be required of the petitioner to immediately divert the said payment to the RFC to be deposited against its dues;

(iv) Upon compliance by the petitioner of the conditions (i) and (ii) supra, possession of the unit in question be handed over to the petitioner; and

(v) Upon failure of the petitioner to comply with any of the requirements aforesaid, RFC shall be entitled to proceed with transfer of assets in question to the respondent No. 4 keeping in view the offer made by him in these proceedings; and the RFC shall also be entitled to take other proceedings in accordance with law.

(c) Parties shall bear their own costs.

(DINESH MAHESHWARI), J.

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Cut No.1

When the borrower had offered to compensate him also, this Court is unable to appreciate the approach of the respondent No.4 for seeking his pound-of-flesh and nothing else. Such an approach cannot be countenanced.